

TEXAS WATER QUALITY ACT OF 1967

CHAPTER 313 ⁴⁶

S. B. No. 204

An Act to establish the Texas Water Quality Board, prescribe its powers, duties, functions, and procedures and to provide for the establishment and control of the quality of the waters in the state and the control, prevention, and abatement of pollution; validating previous actions of the Texas Water Pollution Control Board; providing penalties; repealing Chapter 42, Acts of the 57th Legislature, 1st Called Session, 1961, as amended (Article 7621d, Vernon's Texas Civil Statutes), and repealing certain other laws to the extent of conflict; providing for severability; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Statement of policy

Section 1. It is declared to be the policy of the State of Texas to maintain the quality of the waters in this state consistent with the public health and public enjoyment thereof, the propagation and protection of fish and wildlife, including birds, mammals and other terrestrial and aquatic life, the operation of existing industries, and the economic development of the state, and to that end to require the use of all reasonable methods to implement this policy.

Name of Act

Sec. 2. This Act shall be known as the "Texas Water Quality Act of 1967."

Definitions of terms

Sec. 3. When used in this Act, the following words and phrases shall have the meanings ascribed to them in this Section, unless the context clearly shows a different meaning:

(a) "Person" means any individual, public or private corporation, political subdivision, governmental agency, municipality, copartnership, association, firm, trust, estate or any other entity whatsoever.

(b) "Waters" or "waters in the state" means ground waters, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico within the territorial limits of the State of Texas, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, that are wholly or partially within or bordering the state or within its jurisdiction. Nothing in this Act shall be construed as affecting the ownership, or the rights of owners of the land, in underground water.

(c) "Waste" means sewage, industrial waste, municipal waste, recreational waste, agricultural waste and other waste, or any of them, as hereinbelow defined.

(d) "Sewage" means the water-carried human or animal wastes from residences, buildings, industrial establishments, cities, towns, or other places, together with such ground water infiltration and surface waters with which it may be commingled.

(e) "Municipal waste" means any water-borne liquid, gaseous, solid, or other waste substance, or a combination thereof, resulting from any

46. Vernon's Ann.Civ.St. art. 7621d—1.

and all discharges within or emanating from within, or subject to the control of, any municipality, city, town, village, or any type of municipal corporation.

(f) "Recreational waste" means any water-borne liquid, gaseous, solid, or other waste substance, or a combination thereof, arising within or emanating from within any public park, beach, or recreational area of any kind, public or private.

(g) "Agricultural waste" means any water-borne liquid, gaseous, solid, or other waste substance arising from any type of agricultural pursuit, public or private, including but not limited to, poisons and insecticides used in such pursuits.

(h) "Industrial waste" means any water-borne liquid, gaseous, solid, or other waste substance, or a combination thereof, resulting from any process of industry, manufacturing, trade, or business.

(i) "Other waste" means garbage, refuse, decayed wood, sawdust, shavings, bark, sand, lime, cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals, salt water, and all other substances not sewage, industrial waste, municipal waste, recreational waste or agricultural waste, that may cause impairment of the quality of the waters in the state.

(j) "Pollution" means any discharge or deposit of waste into or adjacent to the waters in the state, or any act or omission in connection therewith that by itself, or in conjunction with any other act or omission or acts or omissions, causes or continues to cause or will cause such waters to be unclean, noxious, odorous, impure, contaminated, altered, or otherwise affected to such an extent that they are rendered harmful, detrimental, or injurious to public health, safety, or welfare, or to terrestrial or aquatic life, or the growth and propagation thereof, or the use of such waters for domestic, commercial, industrial, agricultural, recreational, or other lawful reasonable use.

Where water quality criteria have been established by the Board created by this Act, "pollution" means any discharge or deposit of waste into or adjacent to the waters in the state, or any act or omission in connection therewith, that by itself, or in conjunction with any other act or omission or acts or omissions, causes or continues to cause or will cause such waters to be of a lesser quality than that established by the board as the criteria for those waters; notwithstanding the foregoing, nothing in this Subsection (j) is intended to limit the authority of the Water Quality Board to issue or to require permits for the discharge of waste into or adjacent to the waters in the state, or to establish criteria for any of the waters in the state.

The Board in considering the issuance of any permit to discharge effluent into any body of water having an established recreational standard shall consider any unpleasant odor quality of such effluent, and the possible adverse effect that same might have on the receiving body of water and its recreational uses before granting such permit, and may consider it as one of the elements of the water quality of such effluent proposed to be discharged into such recreational body of water.

(k) "Board" means the Texas Water Quality Board created by this Act.

(l) "Sewer system" or "sewerage system" means pipelines or conduits, canals, pumping stations, and force mains, and all other constructions, devices, and appliances appurtenant thereto, used for conducting sewage, industrial waste, municipal waste, recreational waste, or agricultural waste, or other wastes to a point of ultimate disposal.

(m) "Treatment facilities" means any plant, disposal field, lagoon, pumping station, constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary land fills, or other works not specifically mentioned herein, installed for the purpose of

treating, neutralizing, stabilizing or disposing of sewage, industrial waste, municipal waste, recreational waste, agricultural waste, or other wastes.

(n) "Disposal system" means a system for disposing of sewage, industrial waste, municipal waste, recreational waste, agricultural waste, or other wastes, and including sewer systems and treatment facilities.

(o) "Local government" means an incorporated city, a county, river authority, or a water district or authority acting under Section 52, Article III, or Section 59, Article XVI, of the Constitution of the State of Texas.

Creation and organization of the Texas Water Quality Board

Sec. 4. (a) There is hereby created and established a Texas Water Quality Board which shall be composed of seven members. The board shall carry out the functions and duties conferred upon it by this Act. Three members of the board shall be appointed by the governor with the advice and consent of the Senate of the State of Texas. It is provided, however, that the members of the Texas Water Pollution Control Board appointed by the governor under the provisions of Section 3(a) of Chapter 42, Acts of the 57th Legislature, 1st Called Session, 1961, as amended (Article 7621d, Vernon's Texas Civil Statutes), who are in office when this Act goes into effect are hereby constituted appointed members of the Texas Water Quality Board and shall serve for the balance of the respective terms for which they were appointed by the governor under said Section 3(a). Thereafter all appointments by the governor to this board to fill a vacancy at the end of a term shall be for a full six-year term. In the event of a vacancy among the members of this board appointed by the governor, then the governor shall appoint a new member to finish out the unexpired term of the position which became vacant. In addition to the three members appointed by the governor, the board shall consist of the Executive Director of the Texas Water Development Board, the State Commissioner of Health, the Executive Director of the Parks and Wildlife Department, and the Chairman of the Texas Railroad Commission, each of whom shall perform the duties required of a member of the board by this Act, which shall be additional duties required of him in his other official capacity.

(b) The members of the board created hereby shall receive no fixed salary for duties performed as a member of the board, but each of the three members appointed by the governor shall be allowed, for each and every day he is in attendance at meetings or on authorized business of the board, the sum of \$25, including time spent in traveling to and from the place of meeting or other authorized business of the board, and all members of the board shall be allowed travel and other necessary expenses while in performance of official duty, to be evidenced by vouchers approved by the executive director of the board.

(c) A member of the board who is appointed by the governor shall serve until his successor has been appointed and has taken the oath of office.

Qualifications of members

Sec. 5. The members of the Texas Water Quality Board who are appointed by the governor and confirmed by the Senate shall qualify by taking the constitutional oath of office before any officer authorized to administer an oath within this state, and the official records of the board shall reflect the date of their certificate of appointment issued by the secretary of state, the date upon which and before whom their oath of office was taken, the date upon which their appointive term became effective and the date their term expires.

Personal representatives

Sec. 6. The Executive Director of the Texas Water Development Board, the Executive Director of the Texas Parks and Wildlife Department, the State Commissioner of Health, and the Chairman of the Railroad Commission of Texas may delegate to a personal representative from his office the authority and duty to represent him on the board, but by such delegation a member is not relieved of responsibility for the acts and decisions of his representative. The designated personal representative, while engaged in the discharge of official board duties on behalf of and as authorized by such member, stands in the place and stead of such member for purposes of attending board meetings and performing other business of the board, and for purposes of participating in and voting on matters arising at board meetings and hearings. The designated personal representative may exercise all of the powers, duties and responsibilities of such member, including the taking of testimony in any hearing called by the board under the provisions of this Act, and shall receive reimbursement for traveling and other necessary expenses while engaged in the performance of official board business in the same manner as the one he represents. A personal representative may serve as either chairman or vice chairman of the board under the provisions of this Act.

Selection of officers and meetings of the board

Sec. 7. The board shall elect a chairman and a vice chairman from its members and the terms of such officers of the board shall be for two years commencing on February 1st of each odd-numbered year hereafter. At the first meeting of the board, the chairman and the vice chairman shall be elected to serve until February 1, 1969. The chairman or, in his absence, the vice chairman shall preside at all meetings of the board and perform the other duties prescribed by this Act. The board shall meet at regular intervals at times provided by a majority vote of the board. Special meetings may be called by the chairman, on his own motion, at any time and must be called by him upon the receipt of written request therefor signed by at least two or more members of the board. A majority of the board shall constitute a quorum to transact business.

Rules, regulations and seal

Sec. 8. (a) The board shall adopt, prescribe, promulgate and enforce rules and regulations reasonably required to effectuate the provisions of this Act, including rules governing procedure and practice before the board. In promulgating rules, the board shall comply, as appropriate, with the requirements of Chapter 274, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 6252—13, Vernon's Texas Civil Statutes).

(b) The Board shall adopt a seal.

Executive director

Sec. 9. (a) The board shall employ an executive director. The executive director shall keep full and accurate minutes of all transactions and proceedings of the board and shall be custodian of all of the files and records of the board. The executive director is the chief administrative officer of the activities of the board.

(b) The executive director shall employ the staff required by the board, including a deputy, which deputy is subject to approval of the

board, to assume his duties and functions in his absence. In addition to its own staff the board may request and shall receive by interagency contract the assistance of any state-supported educational institution, experimental station, or other state agency.

Fiscal resources

Sec. 10. (a) The Legislature shall appropriate such funds as are reasonably necessary to carry out the provisions of this Act, and any agency of the state with the responsibilities under the laws of Texas for water pollution or water quality control and for which appropriations may be made in the biennial appropriation act passed by the Legislature for such responsibilities is hereby authorized to transfer to the board created herein such annual amounts as may be mutually agreed on by such agency and by the board, subject only to the concurrence of the governor. It is further provided that said board is authorized to apply for, request, solicit, contract for, receive, and accept money from any federal or state agency, political subdivision or other legal entity as well as private grants and assistance from any source to carry out the duties required by this Act. Such monies as may be transferred under the provisions hereof, and such gifts and grants as may be received by said board, shall be deposited in the state treasury in a special fund, to be used by the board for any of the purposes set forth in this Act including salaries, wages, professional and consulting fees, planning and construction grants and loans, travel expense, equipment, and other necessary expenses, as provided by legislative appropriation.

(b) The board shall make biennial reports in writing to the governor and to the Legislature, which reports shall include a statement of its activities. All information, documents and data collected by the board in the performance of its duties shall be the property of the State of Texas.

(c) Subject to the limitations imposed in Section 21, upon application of any person and upon payment of the fees, if any, prescribed therefor in the rules and regulations of the board, the board shall furnish copies, certified or otherwise, of its proceedings or other official acts of record, or of any map, paper, or document filed with the board. Certified copies under the hand of the chairman or the executive director and the seal of the board shall be admissible in evidence in any court or administrative proceeding in the same manner and with like effect as the original would be.

Authority, powers, and duties of the board

Sec. 11. (a) The board shall administer this Act and shall have authority to establish and control the quality of the waters in the state as herein provided.

(b) The board, by official board order, shall set water quality criteria for the waters in the state and may change or amend such criteria from time to time and notwithstanding any general or special law heretofore enacted, is given hereby the sole and exclusive authority to set and establish and to amend and change the water quality criteria for all waters in the State of Texas. In arriving at such water quality criteria, or amendments thereto, the board shall:

(1) Hold public hearings at which any person may appear and present evidence, under oath, as is pertinent for consideration by the Board. Notice of such hearings shall be given to the local governments contiguous to, or which contain wholly or partially within their boundaries, or through which flow the waters in question, where in the judgment of the board the local government may be affected. Notice shall

also be given to the holders of rights to appropriate water from the waters in question, as shown by the records of the Texas Water Rights Commission, and to the holders of permits from the board to discharge wastes into or adjacent to the waters in question, where in the judgment of the board the holder of a water right or the holder of a waste discharge permit may be affected.

(2) Consult with the Texas Water Development Board and Texas Water Rights Commission to insure that the criteria or amendments proposed to be set by this board are not inconsistent with the general state water plan objectives.

(c) The board shall publish the criteria set by it, together with any amendments thereto, and copies thereof shall be made available to the public on written request.

(d) Any water quality criteria heretofore adopted by the Texas Water Pollution Control Board before the effective date of this Act shall not be affected hereby but same shall remain in full force and effect unless and until amended by further order of the board created in this Act.

(e) The board, after notice to the parties who in the judgment of the board may be affected, and after a public hearing if the board deems a public hearing to be in the public interest, may issue permits for the discharge of waste into or adjacent to the waters in the state.

(f) Each permit shall set forth the conditions upon which it is issued by the board, including, but without limiting such conditions to, the duration of such permit, the maximum quantity of waste which may be discharged thereunder at any time and from time to time, and the quality, purity, and character of waste which may be discharged thereunder. The board shall issue a permit or a notice denying a permit to each applicant within 90 days after receipt of a permit application containing such information as may be reasonably required by the board. The permittee may be required, for good cause, from time to time, after notice to the permittee and after public hearing initiated by the board, to conform to new or additional conditions and terms imposed by the board following such hearing. The board shall allow the permittee a reasonable time to conform to such new or additional terms and conditions; provided, however, that upon application of the permittee, the board, in its discretion, may grant the permittee an additional period of time within which to conform to such new or additional terms and conditions. Such permit or amended permit shall never become a vested right in the permittee, and it may be revoked or suspended for good cause shown, after notice to the permittee and after public hearing initiated by the Board, in the event of the permittee's failure to comply with the terms and conditions of such permit as issued or as amended. Notices to the permittee shall be sent to his last known address, as shown by the records of the board.

(g) (1) The board, by order, may provide limits on the number and kind of septic tanks in any area defined in said order, may provide no septic tanks may be used or employed in such area, or may provide that no new septic tanks may be installed in the area if it finds that because of the nature of the soil or drainage in the area the order is necessary to prevent pollution that may directly or indirectly injure the public health. The board shall consult with the Commissioner of Health of the State Department of Health prior to the entry of any such order. The board may enter an order under this subsection only after a public hearing held in the area to be affected by the order.

(2) The board may provide in the order for a gradual and systematic reduction of the number or kind of septic tanks in the area and may

by the promulgation of rules and regulations provide for a system of licensing and issuing of permits for new installations of septic tanks in the area affected, in which event no person shall install septic tanks in such area without a license or permit from the board. Any person who knowingly violates any such order of the board shall be subject to the civil penalties provided in Section 15 of this Act.

(h) The board is hereby authorized to:

(1) hold hearings, receive pertinent and relevant proof from any party in interest who appears before the board, compel the attendance of witnesses, make findings of fact and determinations with respect to administering the provisions of this Act or of any orders, rules, or regulations of the board;

(2) delegate to one or more of its members, or his personal representative, or to one or more of its employees, the authority to take testimony in any hearing called by the board, or authorized by the Board to be held, with power to administer oaths, but all orders entered shall be made by and in the name of the board after its official action and attested to by the executive director;

(3) make, alter, or modify any orders, rules and regulations, and if any such order requires the discontinuance of the discharge of waste into any waters in the state, the order shall specify the conditions and time within which such discontinuance must be accomplished;

(4) institute, or cause to be instituted, in courts of competent jurisdiction, legal proceedings to compel compliance with the provisions of this Act and the rules, regulations, decisions, determinations, and orders of the board;

(5) conduct such investigations as it may deem advisable and necessary for the discharge of its duties under this Act; and

(6) make contracts and agreements and execute instruments that are necessary or convenient to the exercise of the powers, rights, duties and functions of the Board.

(7) perform such other and further functions as may be necessary to carry out effectively the duties and responsibilities of the board prescribed in this Act.

(i) It shall be the duty of the board to:

(1) encourage voluntary cooperation by the people, municipalities, industries, associations, agriculture, and representatives of other pursuits in preserving the greatest possible utility of the waters in the state;

(2) encourage the formation and organization of cooperative groups, associations, municipalities, or industrial and other users of the waters in the state for the purpose of providing a medium to discuss and formulate plans for the attainment of water quality control;

(3) establish policies and procedures for the purpose of securing close cooperation in the work of the agencies of the state with respect to water quality control functions carried on by such agencies;

(4) cooperate with governments of the United States and other states, and any other agencies or groups of agencies and organizations, official or unofficial, with respect to water quality control matters or for the formulation of interstate water quality control compacts or agreements; where representation of State interests on a basin planning agency is required in complying with Section 3(c) (1) of the Federal Water Pollution Control Act (33 USC 466 et seq.), such state representation shall include an officer or employee of the board;

(5) conduct or cause to be conducted studies and research with respect to water quality criteria or control problems, disposal systems, and treatment of sewage, industrial waste, municipal waste, recreational waste, agricultural waste, and other wastes; and

(6) prepare and develop a general comprehensive plan for the control of water quality in the state.

(j) The board and its duly authorized agents or employees shall have the right to enter at all reasonable times in or upon any property, public or private, for the purpose of inspecting and investigating conditions relating to water quality in the state. Agents and employees shall not enter private property having management in residence without notifying the management, or the person in charge at the time, of their presence and exhibiting proper credentials. Such agents or employees shall observe rules and regulations of the establishment being inspected concerning safety, internal security, and fire protection.

(k) The board, and any employee or agent thereof, when authorized by it, may examine any records or memoranda pertaining to the method of operation of a disposal system, treatment facilities, or discharges of wastes at reasonable business hours.

(l) In issuing, amending, modifying, revoking, or suspending any permit to discharge waste into or adjacent to the waters in this state, or in imposing any new or additional conditions upon any permittee hereunder, the board shall not impose upon the applicant for a permit or the permittee any condition which would require a higher standard of operation than that which is consistent with the best practice in the particular field affected under the conditions applicable to such applicant or permittee. This shall not be construed to prohibit the board from taking any means provided by this Act to prevent the discharge of waste which is injurious to public health.

(m) The board, after consultation with the State Department of Health, shall provide in its rules for a system of approved ratings for city-operated waste disposal systems. A city that operates a waste disposal system which attains an approved rating has the privilege of erecting signs of a design approved by the board on highways approaching that city. If the city's waste disposal system fails to continue to achieve an approved rating, the board may revoke the privilege. On due notice from the board, the city shall remove the signs.

(n) In fulfillment of its powers and duties under this Act, the board may: (1) Enter into agreements with the Department of Interior, the Federal Water Pollution Control Administration, or any other federal agencies now in existence or hereafter created which administer programs providing federal cooperation, assistance, loans, grants, or grants-in-aid for purposes of research, development, investigation, training, planning, studies, programming, and construction related to methods, procedures and facilities for the collection, treatment and disposal of wastes or other water quality control activities as may be necessary to qualify for federal funds, assistance or cooperation under the provisions of the Federal Water Pollution Control Act or any other federal act now in effect or hereafter enacted or amended.

(2) Accept funds from the federal government for purposes coming within the scope of the preceding subsection (1) or any other provision of this Act and expend such sums as may be received from the federal government for such purposes in the manner prescribed by law and in accordance with such agreements as may be necessary and appropriate between the federal government and the board.

(3) Administer and expend state funds provided to the board by legislative appropriations, as distinguished from funds received from the federal government, for purposes coming within the scope of subsection (1), above, or any other provision of this Act in the manner prescribed by law and within the limits of funds appropriated for such purposes, including without limiting the foregoing:

(i) the making of grants to any municipality or interstate agency, as such terms are defined in the Federal Water Pollution Control Act (33 USC 466, et seq.), or to any local government for the construction of necessary treatment works, as defined in said Act, and necessary sewer and sewerage systems, treatment facilities and disposal systems.

(ii) the making of grants or interest free loans to any planning agency acting in furtherance of Section 3(c) (1) of the Federal Water Pollution Control Act (33 USC 466, et seq.), or to any local government to pay administrative and other expenses for a period of not to exceed three years for developing an effective, comprehensive water quality control and abatement plan for a basin, as such term is defined in Section 3(c) (1) of said Act; provided that any loans made under this paragraph shall be repaid to the board at such time as construction of the project for which the planning loan was made is begun.

(o) State grants under Section (n) for construction shall be subject to the following limitations:

(1) no grant of State funds shall be made in any instance unless the grantee agrees to pay not less than 20 per centum of the estimated reasonable cost (as determined by the board) of the project;

(2) no grant shall be made for any project unless the project has been approved by the board and unless the project is included in the state water quality program;

(3) no grant shall be made unless the grantee agrees to pay the remaining cost;

(4) no grant shall be made until the applicant has made provision satisfactory to the board for assuring proper and efficient operation and maintenance of the project after completion of the construction thereof;

(5) no grant shall be made unless the project is in conformity with the state water quality program and unless the board has determined that such project is entitled to priority over other eligible projects on the basis of financial as well as water quality needs.

In determining the desirability of construction projects under Section (n) and of approving state financial aid therefor, consideration shall be given by the board to the public benefits to be derived by the construction and the propriety of the state aid in such construction, the benefits from the protection and conservation of the waters and other natural resources in the state, the relation of the ultimate cost of constructing and maintaining the project to the public interest and to the public necessity for the project, and the adequacy of the provisions made or proposed by the applicant for such state financial aid for assuring proper and efficient operation and maintenance of the project after completion of the construction thereof. Funds paid for construction shall be used exclusively to meet the cost of construction of the project for which the amount was paid. As used in Section (n), "construction" includes preliminary planning to determine the economic and engineering feasibility of the project, the engineering, architectural, legal, fiscal, and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action necessary to the construction of the project; and erection, building, acquisition, alteration, remodeling, improvement, or extension; and the inspection and supervision of construction.

The board shall adopt rules, regulations and procedures to implement and administer the programs authorized in Section (n) which will assure such engineering review and supervision, fiscal-control and fund-accounting procedures as may be necessary to assure proper disbursement of and accounting for funds paid by the board or for which

the board may be responsible. To the extent that the provisions of federal law are deemed applicable by the board, such rules, regulations and procedures shall be compatible therewith. The fiscal-control and fund-accounting procedures shall be supplemental to such other procedures as may be prescribed by state law and procedures.

Court review of board decision

Sec. 12. Any person affected by any ruling, order, decision, or other act of the board, may, within 30 days after the date on which such act is performed, or in case of a ruling, order, or decision, within 30 days after the effective date thereof, file a petition in an action to review, set aside, or suspend such ruling, order, decision, or other act upon the ground or grounds that the same is invalid, arbitrary, or unreasonable, except that any appeal from an order of the board cancelling or suspending a permit granted under the authority of this Act or under the rules and regulations promulgated hereunder shall be by trial de novo and the question at issue subject to determination under the preponderance of evidence rule and not under the substantial evidence rule. Service of citation on the board must be accomplished within 30 days after the filing of the petition, and it shall be sufficient, in any such action, to serve citation on the Executive Director or the Deputy Director without the necessity of serving the individual members of the Board. The venue in any or all such actions is hereby fixed in the District Court of Travis County, or in any District Court of the county where the aggrieved person or persons reside.

Filing of disposal system plans

Sec. 13. For the purpose of aiding the board in effectuating the provisions of this Act, every person constructing or proposing to construct or materially alter the efficiency of any sewer system or sewerage system, treatment facilities, or disposal system, shall file with the board, at least 30 days prior to beginning of construction, the preliminary plans and specifications for the construction or material alteration of the same.

General prohibition against pollution

Sec. 14. It shall hereafter be unlawful for any person to throw, drain, run, or otherwise discharge into the waters in this state, or to cause, permit, or suffer to be thrown, run, drained, allowed to seep, or otherwise enter such waters, any waste, unless pursuant to and in accordance with a then existing permit, that shall cause a condition of pollution as defined in the first paragraph of Subsection (j) of Section 3 of this Act. This section shall also apply to any activity by any person which may cause pollution of the waters in the state which does not involve discharges of waste, provided that if the Parks and Wildlife Department, the General Land Office or the Railroad Commission of Texas has jurisdiction of such activity, then this section shall not apply.

Enforcement

Sec. 15. (a) Any person violating any of the provisions of Section 14 of this Act shall be subject to a civil penalty of not less than \$50 nor more than \$1,000 for each and every day of such violation and for each and every act of such violation. The penalty shall be recovered in the District Courts of Travis County, the district court of the county of residence of the defendant, or in the district court of the county in which the violation is alleged to have occurred. Any person aiding or abetting any other person in the violation of Section 14 of

this Act shall be subject to the same penalties as a person who violates the provisions of Section 14 of this Act. An action for any such violation may be brought in the following manner:

(1) At the direction of the board, the attorney general shall institute and conduct a suit in the name of the State of Texas under this subsection.

(2) Upon formal resolution of its governing body, a local government may institute and conduct a suit under this subsection. However, the board created by this Act is authorized to be and is a necessary and indispensable party to any suit brought by a local government under this subsection.

(3) At the direction of the Texas Parks and Wildlife Department or the employees thereof duly authorized by such Department, the appropriate County or District Attorney shall institute and conduct a suit in the name of the State of Texas under this subsection for any violation which affects aquatic life, birds and animals.

(b) Whenever it appears that any person is violating or threatening to violate any provision of Section 14 of this Act, the board may bring suit against such person in the district court of the county in which the violation or threat of violation occurs, to restrain such person from continuing such violation or from carrying out the threat of violation. In any such suit, the court shall have jurisdiction to grant to the board, without bond or other undertaking, such prohibitory and mandatory injunctions as the facts may warrant, including temporary restraining orders, after notice and hearing, temporary injunctions, or permanent injunctions. It shall be the duty of the attorney general to represent the board when requested to do so. The action shall have precedence over all other causes on the docket of the trial or appellate court of a different nature, and either the board or the defendant or defendants may appeal as in civil cases.

(c) The Texas Water Development Board, the Texas Parks and Wildlife Department, the State Department of Health, and the Railroad Commission of Texas are charged with the following specific duties in addition to any other duties imposed on such agencies elsewhere in this Act:

(1) It shall be the duty of the Texas Water Development Board to investigate all water quality matters concerning the groundwater in the state, and it shall report all findings as to water quality to the board created herein together with its recommendations in regard thereto.

(2) It shall be the duty of the Texas Parks and Wildlife Department and the employees thereof duly authorized by such Department to enforce the provisions of this Act insofar as any violation hereof occurs which affects aquatic life, birds and animals.

(3) The Texas State Department of Health shall, when requested, continue to perform the research, training, planning and other functions presently being conducted by it in matters concerning pollution in cooperation with, or as a state agency contributing its services to, the board. It is the intent of the Legislature that full use be made of the Texas Sanitation and Health Protection Law, Chapter 178, Acts of the 49th Legislature, 1945, as amended (Article 4477—1, Vernon's Texas Civil Statutes), in the abatement of such nuisances as are set forth therein where not inconsistent with this Act.

(4) The Railroad Commission of Texas shall be solely responsible for the control and disposition of waste and the abatement and prevention of pollution of water, both surface and subsurface, resulting from activities associated with the exploration, development, or production of oil or gas. The commission may issue permits for the discharge of

waste resulting from such activities, and discharge of waste hereunder into the waters in the state shall meet the water quality criteria established by the Texas Water Quality Board.

(5) Notwithstanding any provision of this Act, the Railroad Commission of Texas and the Texas Water Development Board shall respectively continue to exercise the authority granted to them in Chapter 82, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 7621b, Vernon's Texas Civil Statutes); and the Railroad Commission of Texas shall continue to and be solely responsible for the exercise of the authority granted it in Article 6029a, Revised Civil Statutes of Texas, 1925; and the Texas Water Development Board and the Texas Water Well Drillers Board shall continue to exercise the authority granted to them in Chapter 264, Acts of the 59th Legislature, Regular Session, 1965 (Article 7621e, Vernon's Texas Civil Statutes).

Authority of local governments

Sec. 16. (a) All local governments shall be authorized to inspect the public waters in their areas and to determine whether or not (1) the quality of the water meets the state water quality criteria adopted by the board, (2) persons or local governments discharging effluent into the public waters located in the areas of which the local government has jurisdiction have obtained a permit for discharge of such effluent, and (3) persons and local governments who possess a permit to discharge into the public waters are making discharges in compliance with the requirements of the permit. A local government may make written recommendations to the board as to what in the judgment of such local government the water quality criteria should be for any public waters within the designated limits of the local government exclusive of any extraterritorial limits.

(b) A local government shall have the same authority to go in and on public and private property to make inspections as the board has under the same provisions and restrictions as are applicable to the agents and employees of the board. Any results of such inspections shall be transmitted to the board for its consideration.

(c) A local government, upon formal resolution of its lawful governing body, may sue in the appropriate district court to restrain any person from violating or threatening to violate the provisions of Section 14 of this Act, if the violation of such section causes or would cause a condition of pollution in any of the waters in its boundaries.

(d) The appropriate district court mentioned in the preceding Subsection (c) shall be the district court of the county in which the violation or threatened violation occurs.

(e) In any such action brought by a local government the district court shall have jurisdiction to grant to the local government such relief as in the judgment of the court the facts adduced at the trial may warrant, including but not limited to temporary restraining orders, temporary injunctions, and permanent injunctions.

(f) The local government and the defendant in any such action may appeal the order of a district court as in other civil cases.

(g) The board created by this Act is authorized to be and must be a necessary and indispensable party to any suit brought by a local government under this Section.

Cooperative agreement

Sec. 17. A local government may enter into cooperative agreements and contracts with other local governments or the Board:

(a) to perform water quality management, inspection and enforcement and give and provide technical aid and educational services to any entity that is a party to the agreement; and

(b) for the transfer of money or property from any entity which may be a party to the agreement to another such entity for the purpose of water quality management, inspection, enforcement, technical aid and education as well as construction, ownership, purchase, maintenance and operation of disposal systems.

Exceptions

Sec. 18. Any pollution which is caused by an act of God, war, strike, riot, or other catastrophe shall not be held to be a violation of this Act.

Notices

Sec. 19. (a) Form of notice. Notice of any hearing or of any other proceeding for which notice is required by this Act shall describe briefly and in summary form the purpose of the proceeding and the time, place, and date thereof.

(b) Publication of Hearing Notice. Notice of a hearing shall be published at least twice in a newspaper regularly published or circulated in the county or counties containing such persons as the board has reason to believe may be affected by action of the board taken by it as a result of the hearing, the first date of publication to be not less than 20 days before the date fixed for such hearing.

(c) Individual Service of Notice. Where notice of any proceeding is required by this Act to be given to a person, the notice shall be served personally or mailed to the person not less than 20 days before the date fixed for such proceeding, at his last known address. If the entity to whom notice is to be given is not an individual, the notice may be given to any officer, agent or legal representative thereof.

Private rights to abate pollution unaffected

Sec. 20. This Act shall not in any way affect the right of any private corporation or individual to pursue all common-law remedies available to abate a condition of pollution or other nuisances or recover damages therefor, or both.

Protection of confidential information

Sec. 21. Nothing herein contained shall require any person to disclose any classified data of the federal government or any confidential information relating to secret processes or economics of operation.

Validation of permits, orders, rules and regulations

Sec. 22. All permits, orders, rules, regulations, water quality criteria and other actions taken, performed and established by the Texas Water Pollution Control Board under the authority of Chapter 42, Acts of the 57th Legislature, First Called Session, 1961, as amended, (Article 7621d, Vernon's Texas Civil Statutes) are hereby validated. All such actions shall be administered by and shall be under the jurisdiction of the board created by this Act, the same as if originally performed by this board, and they shall remain in full force and effect unless and until changed and

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amended by order of this board. All statutes, rules and regulations wherein reference is made to the Texas Water Pollution Control Board or the State Water Pollution Control Board shall hereafter be construed to mean the Texas Water Quality Board. Any permit or order of the Texas Water Pollution Control Board in litigation on the effective date of this Act shall not be affected by this Section, and the rights of the complaining party are expressly reserved.

Repealer

Sec. 23. Chapter 42, Acts of the 57th Legislature, 1st Called Session, 1961, as amended (Article 7621d, Vernon's Texas Civil Statutes), is repealed.⁴⁷ To the extent that a general, local, or special law may be construed to give local governments as defined in this Act the authority to set and enforce water quality criteria other than those adopted by the Texas Water Quality Board, that law is repealed.

Severance clause

Sec. 24. If any Section, sentence, clause or phrase of this Act is for any reason held to be unconstitutional, such invalid portion shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that it would have passed the valid portions of this Act irrespective of the fact that any one or more portions be declared unconstitutional.

Effective date

Sec. 25. The provisions of this Act shall become effective as of September 1, 1967, and it is so enacted.

Emergency clause

Sec. 26. The importance of this legislation and the crowded condition of the calendars in both Houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and this Rule is hereby suspended.

Passed the Senate on April 4, 1967, by a viva voce vote; May 9, 1967,

Senate concurred in House amendments by a viva voce vote; passed the House on May 3, 1967, with amendments, by a non-record vote.

Approved May 27, 1967.

Effective Sept. 1, 1967.

⁴⁷. Vernon's Ann.Civ.St. art. 7621d rep.